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**Michigan House
Energy and Technology Committee**

Testimony in Support of HB 5468

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Chairman Horn and members of the Committee, thank you for the opportunity to testify today. Today I am here to address what the wireless industry thinks is a very important 911 issue – the fair and efficient collection of 911 fees from prepaid wireless users. Therefore, I am testifying in favor of HB 5468 sponsored by Representative Nesbitt that would codify national model legislation for collection of 911 fees on prepaid wireless service at the point of sale.

I appear today on behalf of the major facilities-based wireless carriers doing business in Michigan – AT&T, Sprint, T-Mobile USA, US Cellular, and Verizon Wireless. These wireless carriers believe that the National Conference of State Legislatures' (NCSL) model legislation, embodied in HB 5468, is the best way to ensure that all users of wireless service contribute to the maintenance and operation of the Michigan 911 system. With the rapid growth of prepaid service, it is imperative that Michigan and other states adopt a collection methodology that brings parity between prepaid and postpaid consumers while efficiently and effectively collecting 911 fees from the consumers that benefit from the system.

My written testimony addresses the following topics:

- What is prepaid wireless service and how is it different from traditional “postpaid” wireless?
- National trends in the prepaid wireless market.
- The problems with current law.
- The origin, development, and approval of the national model legislation by the NCSL.
- The key provisions of HB 5468.
- The current status of the model legislation in other states.

How Prepaid Wireless Differs from Postpaid Wireless

Prepaid wireless service allows customers to pay in advance for a fixed number of minutes, or for a fixed time period of use of unlimited minutes. Since customers pay in advance, there is no need to run a credit check on the purchaser and there is no need for the customer to sign a contract for a fixed term of service. This service has proven very popular with credit-challenged consumers as well as those who do not want to be locked into a long-term service contract.

Some prepaid providers – such as AT&T, Sprint, T-Mobile, US Cellular, and Verizon Wireless – own their own wireless networks and sell prepaid service as an alternative to their traditional “postpaid” offerings. Other prepaid providers, like TracFone, do not own their own wireless networks and instead purchase network capacity at wholesale from wireless network owners. Companies like TracFone are known in the industry as MVNOs (Mobile Virtual Network Operators).

Traditional postpaid wireless service is sold directly by the wireless service provider, or its agent, to the consumer. Consumers are billed monthly and must pay that monthly bill, including taxes and fees, in order to receive service. Under federal and Michigan law, the wireless provider must receive and record the address for each user’s “place of primary use” which is the residential street address or business location where the use of the wireless service primarily occurs. For this reason, the wireless provider has a

straightforward mechanism to determine the location where the service should be subject to taxation and a billing mechanism to collect the fee from the user and remit it to the proper 911 agency.

Prepaid wireless service is marketed and sold differently. The initial purchase of prepaid service typically includes a phone bundled with a fixed number of minutes for a single price. When those minutes are exhausted, the customer has several options.

One option is to go a retail store (like a WalMart, Target, or Best Buy) and purchase a “recharge” card with a fixed number of minutes or a fixed dollar amount of service. The card includes a phone number and a code that the purchaser uses to add the minutes or dollars to the phone. It is important to note that the customer – not the retailer — adds the minutes to the customer’s phone. In this instance, the prepaid provider does not know where the customer purchased the recharge card. Also, neither the provider nor the retail store knows where the customer lives. About 70-80% of all prepaid wireless transactions occur in these third party retail locations.

Another option is to go to a wireless provider’s retail store and purchase a recharge card. Again, it is not necessary for the wireless provider to collect any address or other information about the customer at the time of purchase. The customer recharges the minutes at his or her convenience.

A final option is for the customer to recharge their minutes by going directly to the prepaid wireless provider’s web site. In these transactions, the customer must use a credit card or other payment instrument to complete the transaction. Some wireless providers will ask for the customer’s address information as a fraud prevention measure to verify that the credit card is being used legitimately. Wireless providers may or may not retain the customer’s address information for other business purposes.

National Trends in the Prepaid Market

Prepaid wireless has been the fastest growing segment of the fast-growing wireless industry for the past two years. According to CTIA—The Wireless Association:

- Prepaid subscribers are now about 21% of all wireless subscribers, up from 16% in 2007;
- There are now over 68 million prepaid wireless subscribers, an increase of 20 million subscribers between December 2008 and June 2011;
- Almost half of all new subscribers added during the last six months were prepaid subscribers. Prepaid wireless service is growing at an annual rate of 10-15%, significantly faster than the 5% growth rate of traditional postpaid service.

Clearly, the growth in the prepaid marketplace makes it very important that states adopt legislation to ensure that prepaid wireless 911 subscribers contribute their proportional share to the cost of operating the 911 system. HB 5468 would implement such a system.

What Are the Problems With the Current Law?

Current Michigan law requires that a prepaid provider collect the fee from its prepaid customers. Specifically, MCL section 484.1401c governs the application of the 911 fee to prepaid wireless service:

- (1) Each CMRS supplier or reseller shall collect an emergency 9-1-1 charge from each of its prepaid customers. The amount of the emergency 9-1-1 charge shall be established annually by the committee by combining the amounts determined under subsections (2) and (3).*
- (2) The CMRS supplier or reseller shall have a 1-time option of selecting 1 of the following methods of determining the portion of the emergency 9-1-1 charge that represents the state 9-1-1 charge amount:*

- (a) By dividing the total earned prepaid revenue received by the CMRS supplier or reseller within the monthly 9-1-1 reporting period by \$50.00 and then multiplying that number by the amount of the state 9-1-1 charge as established under section 401a.*
- (b) By multiplying the amount of the state 9-1-1 charge as established under section 401a for each active prepaid account of the CMRS supplier or reseller.*
- (3) The committee shall review and annually establish the portion of the emergency 9-1-1 charge assessed under this section that represents the county 9-1-1 charge amount. The charge shall be based on the weighted average of all county 9-1-1 charges imposed statewide.*

Unfortunately, there is no workable method for prepaid providers to collect the fee from their subscribers under the current law because of how prepaid service is marketed and sold. As mentioned above, in the majority of transactions, the prepaid provider sells the recharge cards to the retailer at wholesale and does not receive money directly from the consumer. Without direct contact with the end user, the fee cannot be collected from the customer. When the end user later activates the card and adds the minutes to his or her account, the money has already changed hands and there is no way to reach in and deduct the fee from the consumer's account.

One provider does have the ability to "decrement" or deduct minutes from a customer's account. However, this method does not work with the increasingly popular prepaid unlimited monthly plans since deducting minutes from these accounts has no practical effect.

Some have suggested that the cost of the fee could be built into the wholesale price of the card or service. However, such a practice will not work because prepaid wireless cards are sold in bulk in a national marketplace at nationally negotiated prices, and are purchased and distributed nationally by major retail chains. The prepaid provider has no way of knowing whether a prepaid recharge card will ultimately be sold in Michigan.

Since monthly 911 fees vary across the states, from \$0 in Missouri to \$2.50 in Chicago and Atlanta, it is impossible to set a single uniform national price without requiring customers in states with no or low 911 fees to subsidize customers in states with high 911 fees.

Origin of the Prepaid 911 Point-of-Sale Model Bill

The problems outlined in the current law are not unique to Michigan. There has been a longstanding acknowledgement by the wireless industry and public safety that the current prepaid wireless 911 fee collection methods, which are based on the postpaid wireless model, are not working. When the current methodology was first adopted in states 10 years ago, prepaid wireless was a very small portion of the overall wireless market that there was little focus on finding a solution. However, in 2007, the wireless industry recognized that the growth in popularity of prepaid wireless required a new urgency to develop a workable methodology to collect 911 fees from prepaid users.

The industry knew that a workable solution for both the industry and its retail partners required a national scope in order to minimize compliance and administrative costs. The Mobile Telecommunications Sourcing Act has been a successful model where governments and providers have benefitted from a uniform set of rules for sourcing taxation of postpaid wireless service. However, in this case, the wireless industry believed that developing model legislation for the states would be preferable to asking for federal legislation.

The industry reached out to both the public safety community and our retail partners to develop a fair, uniform, and effective system for collecting 911 fees. The wireless industry spent a year working with these groups to develop a proposal to collect fees at the point of sale while minimizing new costs and burdens on retailers. This resulted in model legislation that was presented to the National Conference of State Legislatures (NCSL) for consideration in December 2008. Following three public hearings on the

proposal and after much discussion and debate, the NCSL endorsed the model legislation in July 2009 during its annual meeting in Philadelphia.

Key Provisions of HB 5468

HB 5468 implements the provisions of the NCSL model legislation. Following are the key provisions of the bill:

- Imposes a 1.92% 911 fee on each retail purchase of prepaid wireless telecommunications service. The rate of the fee mimics the current law mathematical calculation using the postpaid fee as the numerator and \$50.00 as the denominator. However, the fee will be based on the retail price instead of wholesale revenues.
- Requires the seller to collect the fee from the customer on each retail transaction and remit the fee to the Michigan Department of Treasury.
- Provides a methodology for sourcing transactions to the state of Michigan that is consistent with the state sales and use tax. This ensures that the fee is collected not only on face to face transactions in the state but also on Internet and other remote sales to Michigan customers.
- Provides that all current rules and procedures for the sales tax shall apply to the prepaid 911 fee, in order to minimize additional burdens on retailers who already must collect the sales and use tax on prepaid wireless transactions.
- Retailers would remit the 911 fee to the Department of Treasury, where they currently remit sales taxes. The Department would forward the money to the 911 fund. This avoids retailers having to remit sales taxes and 911 fees to two separate state agencies.
- Permits retailers to keep 2% of collected fees to offset ongoing compliance costs.
- Permits the Department of Treasury to keep 2% of remitted fees to offset additional administrative costs.

Status of Prepaid Point of Sale Model Bill in Other States

The attached table shows the status of the bill in legislatures throughout the country. Nineteen states have adopted the NCSL model act for 911 fees. The majority of states that impose a 911 fee on prepaid wireless service now use the point-of-sale approach.

Conclusion: Key Reasons to Support HB 5468

1. The prepaid point of sale methodology is based on actual sales, is transparent to the consumer, accurately sources the transaction to the state and is a more efficient methodology for the collection of the surcharge directly from all prepaid end users and is fair to post-paid consumers;
2. The prepaid point of sale method will provide stable and predictable revenues to support the 911 system in Michigan that exceed what is being remitted under current law.
3. The bill piggybacks on the existing sales and use tax collection system to minimize additional costs on retailers. Retailers already collect the sales and use tax on prepaid wireless service, so this approach leverages existing processes.

Thank you again for the opportunity to testify today.

Prepaid 911: Point-of-Sale Status Sheet
March 15, 2012

Enacted Law (19):

- ME LD 1056 (effective date 1/1/2010)
- LA HB 856 (effective date 1/1/2010)
- TX HB 1831 (effective date 6/1/2010)
- IN HB 1086 (signed 3/25/2010; effective date 7/1/2010)
- SC H 4551 (signed 3/30/2010; effective date 7/1/2011)
- VA HB 754 (signed 4/11/2010; effective date 1/1/2011)
- TN SB 2497 (signed 4/16/2010; effective date 7/1/2011)
- OK HB 2556 (signed 5/4/2010; effective date 1/1/2011)
- MS SB 2938 (signed 5/13/2010; effective date 7/1/2010)
- CO SB 120 (signed 6/7/2010; effective date 1/1/2011)
- RI HB7397, Article 9 (became law 6/12/10; effective date 8/1/2010)
- DC Bill 18-0731 (signed 7/2/2010; effective date 10/1/2010)
- PA HB 2321 (signed 11/23/2010; effective date 7/1/2011)
- UT HB 303 (signed 3/23/2011; effective date 7/1/2011)
- GA HB 256 (signed 5/11/2011; effective date 1/1/2012)
- KS SB 50 (signed 5/18/2011; effective date 1/1/2012)
- NC H571 (signed 6/13/2011; effective date 7/1/2013)
- IL SB2063 (signed 8/19/2011; effective date 1/1/2012)
- **SD SB174 (signed 3/2/2012; effective date 7/1/2012)**

Pending – 2012 Session:

- AL HB7 – in House Boards, Agencies, and Commissions
- AZ HB 2094 – passed House 55-0 on 2/28/12; passed Senate Finance Committee 6-1 on 3/15/2012
- CA AB1050 – passed House (study bill); in Senate Rules
- CT SB 354 – hearing held 3/12/2012 in Joint Finance, Revenue, and Bonding
- KY HB325 – in House Veterans, Military Affairs, and Public Safety
- MD HB779 – in House Health and Government Operations; hearing held 3/13/2012
- MA H643 – in Public Safety and Homeland Security Committee; hearing held 6/23/2011
- MI HB 5468 – in House Energy and Technology Committee; hearing scheduled 3/20/2012
- MN HF441/SF 236 – in House Taxes / Senate Judiciary
- NE LB1091 – Passed Transportation and Telecommunications Committee; on General File debate calendar
- OH HB360 –in House Public Utilities; hearing held 12/6/2011